IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1527 of 2012
DATE OF DECISION: FEBRUARY 21, 2019

SUNIL KUMAR TIWARI AND ANOTHER

APPELLANTS

VERSUS

MAHENDER SINGH & OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Divay Sarup, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No.3.

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AVNEESH JHINGAN, J (Oral):

With the consent of learned counsel for the parties the main case is taken up for hearing today, itself, hence, CM bearing No. 11941-CII of 2018 has been rendered infructuous and is disposed of as such.

The award dated 02.09.2011 passed by the Motor Accident Claims Tribunal, Hisar (for brevity 'the Tribunal') has been assailed by the legal heirs of Ram Kushal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts are not in dispute between the parties that Ram

Kushal lost his life in a motor vehicular accident that took place on 17.02.2009 due to the rash and negligent driving of Hero Splendor bearing registration No. HR-20-J-0355 (for short 'offending vehicle').

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held the driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹93,480/- alongwith interest @ 9% per annum.

The deceased was 53 years old at the time of accident and was a Senior Lab Assistant in Krishi Vigyan Kendra, Karnal. The deceased was a Haryana Government employee and his LR's were entitled to financial assistance under ***Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006*** (for short 'the Rules')**.**

The only issue raised by learned counsel for the appellant is that the amount deducted by the Tribunal as Financial Assistance under 2006 Rules is not correctly worked out.

The issue that the amount received under 2006 Rules is to be deducted is no longer *res-integra.*

The Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others 2016 (12) JT 409,*** has held as under:-

> *"22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of exgratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal*

has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants / claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of subrule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello and patricia Jean Mahajan's cases (supra)."

Keeping in view the law laid down by the Supreme Court, certain factual aspects have to be decided like deduction of the amounts received under the Rules. In order to decide the issue, the parties will have to adduce evidence.

The matter is remitted back to the Tribunal to quantify the compensation afresh in accordance with law after affording opportunities to the parties concerned to adduce evidence in support of their claims.

The appeal is disposed of in the afore-mentioned terms.

[AVNEESH JHINGAN]
JUDGE

FEBRUARY 21, 2019
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Whether speaking/reasoned : ***Yes/ No***
Whether reportable : ***Yes/ No***